

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Caitlin Schwartz	Team: Squad #11	CCRB Case #: 201407897	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 07/30/2014 10:35 PM	Location of Incident: Innis Street and Morningstar Road	Precinct: 121	18 Mo. SOL 1/30/2016	EO SOL 1/30/2016	
Date/Time CV Reported Fri, 08/01/2014 6:27 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Fri, 08/01/2014 6:27 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Michael Gagliardi	06808	950453	121 PCT
2. POM Jonathan Glazer	01037	949035	121 PCT
3. POM Robert Hesterhagen	07727	949868	121 PCT
4. POM Vincent Agostino	25992	945355	121 PCT
5. POM Daniel Golat	09913	950506	121 PCT
6. POM Genaro Barreiro	00308	950050	121 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Michael Gagliardi	Abuse: PO Michael Gagliardi refused to provide his shield number to § 87(2)(b)	
B.POM Jonathan Glazer	Abuse: PO Jonathan Glazer refused to provide his shield number to § 87(2)(b)	
C.POM Robert Hesterhagen	Abuse: PO Robert Hesterhagen refused to provide his shield number to § 87(2)(b)	
D.POM Daniel Golat	Force: PO Daniel Golat pointed his gun at § 87(2)(b)	
E.POM Daniel Golat	Abuse: PO Daniel Golat searched the car in which § 87(2)(b) was an occupant.	
F.POM Michael Gagliardi	Abuse: PO Michael Gagliardi searched the car in which § 87(2)(b) was an occupant.	
G.POM Jonathan Glazer	Abuse: PO Jonathan Glazer searched the car in which § 87(2)(b) was an occupant.	
H.POM Jonathan Glazer	Abuse: PO Jonathan Glazer searched the bag belonging to § 87(2)(b)	
I.POM Vincent Agostino	Abuse: PO Vincent Agostino questioned § 87(2)(b)	
§ 87(4-b), § 87(2)(g)		
§ 87(4-b), § 87(2)(g)		
§ 87(4-b), § 87(2)(g)		

Case Summary

On July 30, 2014, at approximately 10:35 p.m., § 87(2)(b) was stopped in his vehicle for unreasonable noise and obstruction of his windshield by PO Michael Gagliardi, PO Jonathan Glazer, and PO Robert Hesterhagen, all of the 121st Precinct. § 87(2)(b) alleged that when the officers approached his vehicle, he asked them multiple times for their shield numbers, and they did not respond (**Allegations A, B, and C**). The officers asked § 87(2)(b) to exit his vehicle, he refused, and back up was requested. PO Vincent Agostino, PO Genaro Barreiro and PO Daniel Golat, of the 121st Precinct, arrived at the scene. PO Golat drew his firearm, pointed it at § 87(2)(b) and reholstered it after about ten or fifteen seconds (**Allegation D**). § 87(2)(b) was ultimately removed from his vehicle and handcuffed. PO Golat, PO Gagliardi and PO Glazer also searched § 87(2)(b) vehicle (**Allegations E, F, and G**). While searching the backseat of § 87(2)(b) vehicle, PO Glazer located a bag, and searched it (**Allegation H**). PO Glazer found § 87(2)(b) wife's prescription medicine in this bag. § 87(2)(b) alleged that PO Agostino asked him, "How much do you get for a Percocet?" (**Allegation I**). § 87(2)(b) handcuffs were removed, and PO Gagliardi issued him three summonses.

Mediation, Civil and Criminal Histories

This case was unsuitable for mediation § 87(2)(b). As of May 20, 2015, § 87(2)(b) has not filed a Notice of Claim regarding this incident (encl. 14I). § 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Civilian and Officer CCRB Histories

- This complaint is § 87(2)(b) first with the CCRB (encl. 2I).
- PO Genaro Barreiro, PO Michael Gagliardi, and PO Daniel Golat have been members of the service for three years. There are no substantiated allegations against them (encl. 2A-C).
- PO Robert Hesterhagen has been a member of the service for three years. This is the first CCRB complaint filed against him (encl. 2D).
- PO Jonathan Glazer has been a member of the service for four years. In case 201409418 a vehicle search allegation was substantiated against him. The Board recommended Command Discipline A and the NYPD agreed and also issued Instructions (encl. 2F-G)

Findings and Recommendations

Allegations not pleaded

§ 87(2)(g)

§ 87(2)(b)

§ 87(2)(b) said that one of his vehicle's headlight's washers that was not broken before the incident was broken after the incident. However, he did not see any officer touch this washer. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

Allegation A—Abuse of Authority: PO Michael Gagliardi refused to provide his shield number to § 87(2)(b)

Allegation B—Abuse of Authority: PO Jonathan Glazer refused to provide his shield number to § 87(2)(b)

Allegation C—Abuse of Authority: PO Robert Hesterhagen refused to provide his shield number to § 87(2)(b)

§ 87(2)(b) reported that when the officers approached his vehicle, he asked them multiple times for their shield numbers in a sufficiently loud enough voice, but they all ignored his requests. § 87(2)(b) said that he was later able to look directly at one of the officers' shield numbers, which during his CCRB interview to be "1750." This shield number does not closely match that of any of the officers involved in this incident (encl. 4A-I).

PO Gagliardi testified that when they initially approached and before § 87(2)(b) refused to comply with their directives, § 87(2)(b) asked for all of the officers' shield numbers, and they all provided him with the requested information (encl. 5A-H). PO Glazer corroborated that § 87(2)(b) asked for all of the officers' shield numbers. PO Glazer recalled that he provided his name and shield number, which § 87(2)(b) subsequently repeated. PO Glazer then persisted in trying to get § 87(2)(b) to exit his car. PO Glazer denied that § 87(2)(b) asked again for the other officers' shield numbers. He could not recall whether PO Gagliardi and PO Hesterhagen were in positions from which they could readily hear § 87(2)(b) request, or whether they responded to the request or provided their shield numbers (encl. 7A-E). PO Hesterhagen denied that § 87(2)(b) requested his or the other officers' shield numbers (encl. 6A-E).

§ 87(2)(g)

Allegation D—Force: PO Daniel Golat pointed his gun at § 87(2)(b)

Allegation E—Abuse of Authority: PO Daniel Golat searched the car in which § 87(2)(b) was an occupant.

§ 87(2)(b) admitted that he refused to exit the vehicle and that backup officers had to be called to the scene and that numerous police vehicles responded before he exited. The Event merely stated that the Conditions team made a call for assistance (10-85), and did not provide details of why (encl. 11A-C).

PO Golat stated that when he responded to the call for assistance, as he approached the driver's side of § 87(2)(b) vehicle, he heard multiple officers telling § 87(2)(b) to get out of his car about ten times total. No officers at the scene told PO Golat what had preceded his arrival or why assistance needed to be called. § 87(2)(b) screamed at the officers that he was not going to get out of his car. § 87(2)(b) appeared to lean to his right, and reach underneath the seat with his right hand. PO Golat could not see § 87(2)(b)'s hand or what he was reaching for, and feared that § 87(2)(b) may have had a weapon in the car. PO Golat pointed his firearm at § 87(2)(b) because he feared for his safety after § 87(2)(b) reached under his seat in a dark car while refusing to exit the vehicle. After about ten or fifteen seconds, he reholstered his firearm, and § 87(2)(b) was removed from his vehicle by officers that PO Golat could not recall; § 87(2)(b) was handcuffed him. PO Golat stuck his head into § 87(2)(b) vehicle, and looked under the front seat to make sure that there was no weapon stowed there. PO Golat did not find anything under the seat. He did not search elsewhere in § 87(2)(b) vehicle.

Given the inherent danger involved in vehicle stops, officers are given broad discretion to display their firearms when they feel that their lives or others are endangered. *NYPD v. Gliner*, OATH Index No. 955/00 (Sept. 6, 2000). An officer's observation of an individual making movements readily suggestive of reaching for a weapon in tandem with at least one other indicia of the presence of a weapon supports a reasonable suspicion of the weapon's presence and justifies a limited search of the area of the vehicle in which the individual was observed reaching. *People v. Newman*, 96AD2d (1st Dept. 2012) (encl. 1A-X).

§ 87(2)(g)

Allegation F—Abuse of Authority: PO Michael Gagliardi searched the car in which § 87(2)(b) was an occupant.

Allegation G—Abuse of Authority: PO Jonathan Glazer searched the car in which § 87(2)(b) was an occupant.

Allegation H—Abuse of Authority: PO Jonathan Glazer searched the bag belonging to § 87(2)(b)

It is undisputed that § 87(2)(b) refused to exit his vehicle after being instructed multiple times to do so, and his non-compliance caused the officers to call for the assistance of other officers, and that PO Gagliardi and PO Glazer searched his vehicle. It is further undisputed that PO Glazer searched a bag that was located in the back seat of § 87(2)(b) car.

§ 87(2)(b) testified that he provided his license, registration and insurance card immediately upon the officers' request. § 87(2)(b) also stated that his glove compartment was closed when he exited his vehicle, but when he returned to it, all of the contents previously in his glove compartment had been removed and placed on the front passenger's seat. § 87(2)(b) described the bag that was searched as a black duffel bag. He said that it was zipped when he exited his vehicle, and enumerated its contents to be toiletries, cologne, and a bottle of Vicodin prescribed to him to treat injuries he sustained as a result of a motorcycle accident.

PO Gagliardi, PO Glazer and PO Hesterhagen all testified that while § 87(2)(b) was noncompliant with the officers' instructions to provide the requested documentation and exit his vehicle, he continuously stuck his hand into his glove compartment and pulled it out again without retrieving anything. The officers estimated that § 87(2)(b) performed this action over and over for up to five minutes. While at first the officers thought he might be retrieving his documentation, when it became clear that he was not, they became concerned that he might be reaching for a firearm secreted in the compartment. After § 87(2)(b) was removed from the vehicle, PO Gagliardi and PO Glazer searched therein. The officers cited § 87(2)(b) furtive

movements—particularly the reaching in and out of the glove compartment—as prompting them to search the vehicle for any weapon stashed therein. PO Glazer entered the vehicle through its driver’s door, and PO Gagliardi entered through the passenger’s door. They both searched what they described as the lungeable and grabbable areas, including underneath and in front of the front seats. They both said that § 87(2)(b) had left the glove compartment box open. PO Gagliardi stated that he did not put his hands inside. PO Glazer admitted that he reached inside and moved around the papers, but he did not remove any item.

PO Gagliardi and PO Glazer also searched the back seats. PO Gagliardi entered through the rear passenger’s seat and checked the back seat floor mats. PO Glazer looked underneath the front seat from the back seat of the car. PO Glazer stated that he encountered in the back seat a large woman’s black pocketbook that was about a foot long, and said that he proceeded to search it because it was open, allowing him to see a couple of pill bottles and a loose identification, which were not in an enclosed part of the bag. Some of the pill bottles contained a narcotic substance, which PO Glazer could not specifically identify during his CCRB interview, and were prescribed to an individual also named § 87(2)(b) who PO Glazer confirmed with § 87(2)(b) was § 87(2)(b) wife. PO Glazer returned the pill bottles to the bag after looking at them. § 87(2)(b) provided photographs of the interior of his vehicle taken following the incident (encl. 4F-G).

As mentioned above, an officer’s observation of an individual making movements readily suggestive of reaching for a weapon in tandem with at least one other indicia of the presence of a weapon supports a reasonable suspicion of the weapon’s presence and justifies a limited search of the area of the vehicle in which the individual was observed reaching. *People v. Newman*, 96AD2d (1st Dept. 2012). Once the occupants have been removed from a vehicle, any immediate threat to the officers’ safety has been removed, and they therefore would require further justification to search the passenger’s compartment of the vehicle or any container therein. *People v. Theodis*, 155 A.D.2d 339 (1st Dept. 1989) (encl. 1T-AA).

§ 87(2)(g)
[REDACTED]

Allegation I—Abuse of Authority: PO Vincent Agostino questioned § 87(2)(b)
§ 87(2)(b) alleged that after PO Gagliardi and PO Glazer searched his vehicle, PO Agostino asked him, “How much do you get for a Percocet?” implying that § 87(2)(b) sold drugs. PO

prescription pills. § 87(2)(g)

§ 87(4-b), § 87(2)(g)

Team: _____

Investigator: _____
Signature Print Date

Supervisor: _____

Title/Signature	Print	Date
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Reviewer: _____
 Title/Signature Print Date

Reviewer: _____

Title/Signature	Print	Date
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